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August 28, 2008

Tukwila Planning Commission  
City of Tukwila  
Department of Community Development  
6300 Southcenter Blvd., #100  
Tukwila, WA 98188

Re: August 28, 2008 Public Hearing--Comments on Draft Shoreline Master Program Update

Dear Planning Commission Members:

We represent Yellow Transportation, Inc., a subsidiary of YRC Worldwide Inc., and owner of an approximately 12.8 acre property located along the west bank of the Green/Duwamish River at 12855 48<sup>th</sup> Ave S in the City of Tukwila. We are writing to provide comments on the proposed Shoreline Master Program Update ("SMP Update") -- in particular, to request that the Planning Commission allow for additional public participation in light of the significance of the changes proposed and their impacts on Yellow Transportation and other riverfront property owners and businesses and the dearth of opportunities to comment on the SMP Update.

Yellow Transportation is the largest subsidiary of YRC Worldwide, and provides regional, national and international transportation and related services to approximately 400,000 customers. The Tukwila facility is a 73,413 square foot freight distribution center which also contains 12,428 square feet of office space and 128 loading docks on 12.80 acres. In addition to servicing the Seattle market, the Tukwila facility also serves as a northwestern origination point for the more than 250 facilities in Yellow Transportation's network throughout the country. In terms of square footage and loading docks, Yellow Transportation's Tukwila facility is the largest facility that YRC Worldwide operates in the State of Washington. There are currently 164 employees at this site. Yellow Transportation has used the Tukwila facility as a freight distribution center continuously since 1983.

EXHIBIT 19 DATE 8/28/08  
PROJECT NAME Smp Update  
FILE NO 206-088



## **1. Need for additional public participation**

As even the SMP Update expressly acknowledges, the proposed SMP draft represents the first substantial amendment to the existing SMP since its adoption in 1974. The 122-page SMP Update proposes far-reaching and significant changes to existing SMP policies and regulations, changes that will have a profound, adverse affect on Yellow Transportation's ability to use, maintain, and redevelopment its Tukwila facility. And while the SMP Update has apparently been under development by City staff for months and even years, tonight's Planning Commission hearing is Yellow Transportation's first opportunity to comment on the draft SMP Update. Worse yet, Yellow Transportation first learned of the existence of the draft SMP Update just three days ago, which has severely handicapped its ability to adequately review and provide comments on the SMP Update. We understand from recent discussions with other property owners and businesses subject to and affected by the proposed changes to the SMP that Yellow Transportation is not alone in this regard.

Such lack of reasonable notice and opportunity to review and provide comments on the SMP Update violates the mandatory public participation requirements of the Shoreline Management Act ("SMA"), Chapter 90.58, RCW, and the Department of Ecology's Shoreline Master Program Guidelines, Chapter 173-26 WAC. It also violates the Growth Management Act, Chapter 36.70A, RCW. For example, under WAC 173-26-090, Tukwila is required to establish and broadly disseminate to the public a participation program identifying procedures whereby proposed amendments to the comprehensive plan and development regulations relating to shorelines of the state will be considered by the City, including procedures that provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunities for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments. So far as we are aware, Tukwila has not even adopted such a public participation program let alone taken action consistent with such a program for the SMP Update had it done so.

Consequently, Yellow Transportation requests that the Planning Commission remand the draft SMP Update to the Department of Community Development for additional public participation and input. At the very least, the Planning Commission should hold the record open in these proceedings to allow affected property owners and businesses like Yellow Transportation adequate opportunity to further evaluate and comment on the draft SMP Update. Given the fact that Tukwila has until December 1, 2009 to amend its SMP to bring it into conformance with the new Shoreline Master Program Guidelines, there is no need for the City to rush through adoption of the SMP Update without allowing for adequate public participation.  
RCW 90.58.080

## **2. Comments on SMP Update provisions**

Based on our preliminary review of the SMP Update to date, we offer the following comments on specific SMP provisions that will have a significant impact on Yellow Transportation's use, maintenance and redevelopment of its Tukwila facility property, which is proposed to be designated Urban Conservancy in the SMP Update:



First, the SMP Update proposes to increase the buffer for the Tukwila facility property from 40 feet to at least 100 feet. Update, §7.6. The buffer is also a setback, within which no uses or development relating to Yellow Transportation's Tukwila facility would be permitted. Update, §§8.3(A), 9.3(B).

Second, the SMP Update would require installation and maintenance of substantial, expensive revegetation and landscaping, both within and outside of the river buffer. Update, §9.10. The parking area landscaping, in particular, would substantially interfere with Yellow Transportation's use of the site for parking, maneuvering and loading its freight trucks.

Third, the SMP Update would require parking facilities, loading and service areas to be located on the landward side of shoreline development. Update, §9.9. Again, this would substantially interfere with and virtually eliminate any use of the Tukwila facility property within 200 feet of the River.

Fourth, the SMP Update would require Yellow Transportation to provide additional public access to the River and to improve existing public access—in particular, to upgrade the existing Green River Trail along the property frontage to meet current standards of a 16-foot wide trail with 2-foot shoulders on each side and to provide trail connectors from the nearest public area. Update §11.3.

Fifth, the SMP Update would limit outside lighting on-site to 1-foot candle power, which would create a security hazard for operation of the Tukwila facility.

Sixth, the SMA Update would prohibit the handling and storage of hazardous waste, regardless of whether handling and storage would comply with all federal, state and local requirements, is unwarranted. Such a prohibition is unwarranted.

Seventh, the SMP Update would require these new standards to be met even for relatively minor alterations and redevelopment of the property, including: any new construction; expansion of existing structures; any exterior alterations of a structure where costs within a three year period equal exceed 10% of the building assessed value; a change in building occupancy; and any site modifications, such as, but not limited to land alteration, paving, and riverbank modifications. Update, §§9.1, 14(B).

These and other provisions of the SMP Update would substantially interfere with Yellow Transportation's use and redevelopment of its Tukwila facility property. As currently proposed, these and other provisions are unjustified under and fail to comply with both the SMA and Ecology's Guidelines, and the Growth Management Act. They also violate state statutory and constitutional law.

For example, many of the subject standards and regulations in the SMP Update are for the purpose of restoring and enhancing shoreline functions and values instead of ensuring no net loss of such functions. *See, e.g.* Update, p. 48. The latter may be a permissible purpose under the SMA, the former clearly is not. *See, e.g., Swinomish Indian Tribal Community v. Western*



*Washington Growth*, 161 Wn.2d 415, 166 P.3d 1198 (2007) (County lacks authority to require enhancement of critical areas where obligated to protect such areas). The subject SMP Update provisions are unlawful to the extent they are for the purpose of requiring restoration and enhancement of existing shoreline functions and values.

They also constitute unlawful and unconstitutional exactions because they would require property owners to provide public access and install other public benefit improvements that are not reasonably related or roughly proportional to the impacts of the use and development of the properties subject to these provisions. *See, e.g., Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 761, 49 P.3d 867 (2002) ("development conditions must be tied to a *specific, identified impact* of a development on the community."); RCW 82.02.020 (Exaction is unlawful tax or fee unless City meets burden of establishing that development conditions are reasonably necessary as a direct result of the proposed development); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 677 (1987) (City must show "essential nexus" between required condition and impact of development); *Dolan v. City of Tigard*, 512 U.S. 374, 386-94, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994) (City must make individualized determination the required condition is "roughly proportional" to the impacts of the proposed development). Further, they purport to impose development conditions to "relieve a preexisting deficiency," which is clearly unlawful. *Benchmark Land Co. v. City of Battleground*, 146 Wn.2d 685, 695, 49 P.3d 860 (2002).

As indicated, because of the lack of adequate notice of and opportunity to review and provide comments on the proposed SMP Update, the comments provided herein are at most preliminary and indicative of the legal and practical problems posed by many of the policies and regulations, as well as the substantially adverse effects that they would have on Yellow Transportation's use, maintenance, and redevelopment of its Tukwila facility. For these reasons, Yellow Transportation requests additional opportunities for public participation in this substantial rewrite of the City's SMP.

Thank you for your consideration of these comments.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'C. Maduell', written over the name 'Charles E. Maduell'.

Charles E. Maduell

cc: Brad Schroeder, Vice President, Finance & Properties, YRC Worldwide Inc.  
Joseph J. Pec, Esq., Enterprise Transportation & Shared Services Counsel,  
YRC Worldwide Inc.